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RIGHT AND HUMAN PERSONALITY IN THE HISTORY OF THOUGHT.

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THE philosophy of law or right, as the name implies, is made up of philosophy and jurisprudence. Hence it is sometimes presented as jurisprudence raised to a plane of universality, and again as philosophy applied to a special field, namely law or right. If we take this second definition, the dependence of the philosophy of right upon general philosophy is evident; but even if the philosophy of right is viewed as emanating from jurisprudence—a projection, as it were, of jurisprudence into the world of general ideas—its doctrines necessarily participate in the dominant philosophy of the day, since they translate back into philosophical terms the philosophical spirit which has more or less consciously found expression in the positive data of jurisprudence. The philosophy of right springs from that part of law and jurisprudence which is more directly in contact with philosophical thought and more immediately influenced by it.

Philosophical speculation and philosophy of right have, therefore, been closely and constantly connected historically. In classical antiquity the proper term would be “mixed” rather than “connected.” Jurisprudence in the strict sense did not have a great scientific development in Greece and philosophers did not feel the need of bringing their doctrines in this field into well-defined *rapport* with positive legal institutions, whereas this relation between

speculative justice and judicial fact, however understood and determined, is an essential part of the philosophy of right. The balance between jurisprudence and philosophy was imperfect because jurisprudence was as yet inadequate; hence philosophy of right among the Greeks was taken up into general philosophy and to a certain extent absorbed therein.

Among the Romans the opposite was the case; no adequate philosophy corresponded to the great efflorescence of law and jurisprudence. The doctrines of the Stoa certainly exercised a profound influence upon Roman lawyers and had a considerable rôle not only in legal science but also in the formation and historical development of legal institutions. In the Stoa's imperious, austere, and cosmopolitan doctrines, sublime in their rigidity, Roman lawyers recognized the same ideal which the Roman people had endeavored and were still endeavoring to realize through their laws and their institutions of peace and war. For this profound reason, Stoic theories became the foundation of the philosophy of right in Rome. The doctrine of *jus naturale* as there constituted was certainly on the one hand an outcome of the internal development of Roman positive law, especially of the *jus gentium*; but on the other hand, it also reflected Greek speculative activities which had not perhaps found great acceptance in Rome. On this basis—let us note incidentally—we believe that opposing theses, held as is well known by Voigt and Hildenbrand, can be reconciled.

In the Roman world, however, the philosophy of right did not make extensive systematic progress because of the lack of research in general philosophy. Speculative elements are indeed found in rich abundance in Roman jurisprudence; but these are not themselves the object of a real scientific investigation. They are not brought out and systematized in abstract form. Thus, while Greek thought represents right absorbed by philosophy, Roman thought represents philosophy mixed and actively fused in right. The two bodies of thought remain, however, the

classic sources of the philosophy of right, which, through all its historical progress, has had to derive speculative elements from the Greek world and juridical elements from the Roman.

Human nature also, especially in Greek inquiry, had been considered in its more general aspects. But as a rule, especially in his relations to law and right, the man had been identified with the citizen in Greece as well as in Rome. Just because the individual's absolute need of the state had stood out clearly, it was only in those who were in possession of civil rights that human personality appeared to philosophers as complete. There was indeed the philosophical conception of what a man is "by nature" as contrasted with what he is by institution or "convention." This served certainly to mitigate the condition of non-citizens, strangers, and slaves who had, indeed, never been treated as "things" (*res*), as the strictly dogmatic construction of ancient law would imply. However, in their actual working assumptions, both Greek philosophy and Roman jurisprudence contemplated man's juridical personality only as it was found verified in terms of the state.

The analysis of the relations between psychological personality and its political recognition, between rights rationally deduced from human nature and those which in the positive law of the day actually belonged to existing social classes, was precisely the part of ancient philosophy of law which was weakest. Theoretically, the ancient philosophy of law was not critical; practically, it was not revolutionary.

The Christian conception of the world was in its origin an attempt to exalt the dignity of the human being, recognizing in man, solely as man, a divine and eternal principle, and, therefore, placing all men in common in an ideal order of equality. In this ideal order they were to be raised above the accidents of their various earthly lots. It is to be noted, however, that in such a conception the value of the individual is placed not so much in his actual nature as in a supernatural expectation or aspiration of which the

individual himself is capable; the *seat*, so to speak, of his moral and juridical dignity, is not really in him but above him. However, so long as this relation between the individual and the divine principle was conceived in its original form as a purely internal bond holding directly between man and the divinity above him, it was in its juridical implications a title or reason of freedom. But as a result of the gradual formation of a social power which formed a third term in the relationship between man and God and imposed its mediation as a necessary agency to lead the human back to the superhuman, the same idea which at first had meant redemption and elevation of the individual was converted into an instrument for his unconditional subjection. The dependence which in its proper idea was purely spiritual and *intime* between man and a divine voice (*vox divina*) manifesting itself in man's own conscience, became objective, external; that is, it changed into a hierarchical dependence of dominated men upon dominant men, of the subjects of divinity upon the ministers of divinity. And notwithstanding this mutation, this relation of dependence preserved the same characters of absoluteness and of introspective evidence which were proper to it in its original form.

The principle of the moral elevation of human personality, which belongs to the original spirit of the doctrine just described, became thus entangled and lost in the hierarchies which encompassed not only man's exterior activity, but also the intimate fountains of thought. The virtual dignity of the human person who was to find his adequate development in a transcendent future only, remained meanwhile in the actual world of nature a mirage. The principle of the divine essence of the soul and the hope of an eternal salvation, far from raising all men to a social basis of liberty, served in fact to legitimate any form of government or dominion, however oppressive, that was exercised in the name of that principle, or in relation to that hope.

And yet this was all logical. Liberty is essentially the position of a being who is an end. But when the life of

man is considered not as an end, but rather as a means for obtaining an end which has been set for it by superior will, then it is no longer in itself an object of respect; it becomes such only in so far as it is effectively directed toward the prescribed end. The reason of life is placed outside life, and to demand during this life an absolute liberty for man would appear as a negation of that outside future end, as a wrong attitude toward that superior will. Concretely, it would appear as a rebellion against the organs of social power, which affirm themselves to be representatives and trustees of that power.

Human personality as conceived by law and justice during the Middle Ages presents itself, therefore, as bound up with a philosophical doctrine. The soul of the individual is created and does not create; the human will is the subject, not the author, of its law. As in the theoretical, so also in the practical sphere. The human mind is regulated by its objects. It is not the regulator of these. Aspiration toward liberty—the great motive force of every historical development—gives place, therefore, to an inextinguishable thirst for authority. The principle that life has a provisional value and that all depends upon a supreme and inconceivable will which imperiously points out the end for life, suffocates all initiative of individual reason, frustrates every attempt at free and direct speculation upon nature, and compels the thought of the time to converge upon a ruminating and necessarily sterile elaboration of preconceived dogmas; it limits action to the passive observance of the same.

This passive demeanor of the spirit, submissive to external authority, inverts the visual angle from which human personality can be conceived as an absolute principle in the realms of metaphysics or in those of morals and jurisprudence. If the philosophical theory of right was to emerge and acquire the definite character of free science, a profound crisis must give occasion for restoring the lost sense of the essential humanity of right and for freeing the natural vision of what justice is from the foreign elements which had deformed it.

The return to classic fountains was the first incitement to such a restoration and renewal. The philosophy of right began in fact to spring up at just the time when the growing studies of Roman law on the one hand and the recovered books of Aristotle's *Politics* on the other, had in the thirteenth century brought new intellectual problems to the great political contests of the time. In that laborious period in which the germs of successive theories may easily be discovered, the theological conception of the world was still dominant and was still saturating with its temper of authority the activity of thought, giving too a peculiar stamp to those attempts at new speculation which were initiated on the foundations of the classics. This explains the singular and intrinsically contradictory fact pointed out by Oncken that the work of Aristotle was canonized by the scholastics and afterwards bitterly opposed by the first champions of modern conscience and of the method of observation; whereas, if Aristotle had been well known, exactly the contrary should logically have happened.

A true and completely scientific reorganization of the philosophy of law was only possible when a corresponding regeneration took place in general philosophy; that is, in the directive principles of all knowledge. It is all a vast movement, eminently complex and concatenated, completing itself by ways which are apparently different but in reality concurrent. It takes different names according to its different aspects; it is called "Renaissance of the fine arts and of the natural sciences," "religious protest," "reform of method," "beginning of modern philosophy," finally the establishment upon an independent basis of the science of natural right, which is merely the traditional and classical name of the philosophy of right. It is all a process of emancipation of the spirit, a triumph—long in preparation and achieved by laborious and sometimes bloody struggles—of reason and human personality which now takes on new consciousness of its force and sovereign dignity in every department of life.

This great revolution must be considered more closely

in order to disclose the connection between the philosophical conception of human nature and its application in the theory of right.

What distinguishes the new age from the preceding and determines the new direction of all thought is in general this great capital fact: man, who in the Middle Ages derived his worth and personal standing from an external principle and looked upon himself and the world only through prisms of dogma, set before him by higher authority, has recourse now to his own reason and relies on this as on the highest criterion of truth, and thus places himself in direct relation with nature.

This is the general principle which shows also the psychological meaning of the vast and profound crisis in human development. The new position of the human spirit partly represented a return to the classical conception of life; and to the wide and liberal study of Greek and Latin intellectual treasures, is to be attributed especially the new and freer sense of form, the prevaillingly æsthetic element which is revealed in all the works of the Renaissance. Another great fruit of that study was the reawakened cult of the human; that is, the full and balanced appreciation of all that is really natural to man. Such an appreciation eliminated those ascetic prejudices which made the body an object of contempt and the mortification of the sense the most advantageous and meritorious means of lifting and purifying the spirit. The harmonious vision of life, which was the greatest glory of Greek civilization, returned in this new dawn; it was congenial to the motive which inspired the scientific revival.

Certainly the dogmatic medieval spirit did not relax its hold forthwith; it still held its empire in part and offered powerful opposition to the new intellectual currents. Nevertheless, as if in partial recompense, methods of patient analysis fostered by the scholastics' treatment of dogmas had borne some good fruit. Reason served a hard probation in an arid field where it was compelled to work within narrow and pre-established limits, but the result

was an extreme refinement of the capacity to abstract, distinguish, and argue. And although a great part of the actual product lost all significance when the premises on which it rested fell away, an active and acute sense for dialectic had been acquired which was to find a much more fruitful employment thenceforth in unprejudiced study of the mind and of nature.

In that decisive hour of its history, humanity may have felt a general need of subjecting itself to a process similar to that to which Descartes submitted when he would begin a new intellectual life. "I persuaded myself," he writes, "that as regards all the opinions in which I had till then believed, I could not do better than to undertake once for all to divest myself of them, in order afterwards to take on others that were better, or even the same, when I had adjusted them to the level of reason." The regenerating crisis which did its work in the mind of the father of modern philosophy was an analogy of the more general crisis in all thought. Mental idols imposed by tradition and previously accepted as *a priori* were deliberately cleared away. Critical reflection took the place of dogmatic reception; knowledge was treated as subjective, that is, it was brought back to its first principle, consciousness; these reversals of method took place in all departments of the activity of the spirit, and gave rise in all to new and powerful revivals.

The renewal of natural science was in especially close connection with the renewal of philosophy. The works of Bruno, Bacon, and Cartesius could hardly be understood without those of Copernicus, Kepler, and Galileo. A series of common presuppositions determine both. Then the idea began to assert itself which was to have such a wonderful subsequent development—that science must work on the foundation of unprejudiced observation of natural phenomena. This conception, so simple in appearance, which in Germany is customarily called "science without presuppositions," implies rather a whole rational program. Faith in experimentation is legitimate only when it is admitted that the human mind is in itself alone

adequate to the knowledge of truth. Not by chance could the sciences of nature rise up and celebrate their most glorious triumphs at the same time that reason was declared by philosophy the first and most certain criterion of knowledge.

That same critical demand which in physical science brought everything to the natural light of reason alone for scrutiny and decision must inevitably show itself also in matters of faith. Here too it recognized the individual consciousness as ultimate. The religious reformation, which had an incalculable influence upon all succeeding civilization, meant exactly this. As the letter of ancient dogma could no longer chain the human mind in its contemplation of nature, so its coercion must cease in that of God. Here too a direct relation was sought between the thinking subject and its object—a relation free from intermeddling and based on internal autonomy of the subject.

Although, for reasons that it will be superfluous to state here, the Reformation soon gave place to a new dogmatism, it is certain that its principle corresponded to the general tendency we have stated, in accordance with which the human spirit came to substitute its own authority for external authority imposed by tradition.

The right to doubt—having for its presupposition a single certainty, namely, that of the subject which doubts—had thus asserted itself in the sciences of nature with the demand for experimental observation, in religion, with the demand for free examination and individual interpretation of the Scriptures. It was only in philosophy, however, that it could find a sufficient systematic explanation. In this consists the immense importance of the work of Descartes, which, although it worked out into dogmatic conclusions, was in its original principle gloriously and invincibly critical.

Methodic doubt assumes a special significance in the philosophy of Descartes because there it is consciously and systematically deduced from its two suppositions—from the liberty of the spirit. It is "*l'esprit, qui usant de sa*

propre liberte, suppose que toutes les choses ne sont point," to use the words of Descartes. The spirit in its hypothetical flight through objects which dissolves reality by its dialectic, finds finally in itself the fixed point whereon to stand; finds in itself the substrate and sufficient reason of its own crisis, the unshaken, irremovable, and indivisible foundation of every truth and of every doubt. "Cogito, ergo sum"; that is, I am absolutely thought, and my thought is the first law and first guarantee of every existence.

The spirit, *res cogitans*, is, therefore, a substance, a thing of freedom, absolutely a *prius*. The "I" has in its very self the faculty of producing ideas which do not derive from external objects but from the substance itself of "I"; whence in this sense they are called innate.

How afterwards in the Cartesian system the idea of a God which is a projection of the thinking subject may come in fact to have an objective value which exceeds that of the subject itself, we must not here examine. That belongs to the internal logic of the system. What is important for us is only the initial point, the fundamental assumption: that is, the elevation of the individual consciousness to be the supreme principle of the conception of the world.

The absolute value of the human person in its theoretical aspects was recognized in the doctrine of the substantiality of the soul. But this same principle must be asserted also in the realm of action, that is, it must be retranslated into the doctrines of ethics and politics. The principle of reality and of knowledge must become the principle of morality and law. The idea that man is by his very essence a something absolutely *prius*, a free substance, is as valuable for the theory of knowledge as for that of right, and is applicable to the latter in the same way as to the former.

As then human nature had become the pivot of new speculative systems, it must become also the foundation of new construction in jurisprudence. In place of the conception of a divine will which institutes and determines social regulations for its own sole authority—an authority

subject to no censure or control—a different conception is now substituted, namely, that these regulations ought to have their principle and sovereign law in reason and in the natural constitution of man. Thus was brought about the distinction between legal philosophy and theology, a distinction which has immense historical importance because it made possible a free exercise of reason upon the problem of the foundations of society and of right. Philosophy of right, which had so long been compelled to build upon what had been given through revelation, could now proclaim itself a free science. The celebrated declaration of Grotius in which he expresses this fundamental conception runs as follows: “Natural right would exist even if we should grant that God did not exist or that he did not care for human affairs.” (*Etiamsi daremus non esse Deum, aut non curari ab eo negotia humana.*) Such a principle, which made it possible to treat justice on the basis of reason alone without implying any object of mere faith, had, however, already been accepted and employed more or less extensively by the numerous writers who are called precursors of Grotius. And aside from the general theoretical motives which had suggested it, the changed conditions of political life had also brought it to the front; for it is a general rule that the same requirements of reason which are expressed in systems as speculative deductions present themselves in the world of reality as the effects of historical forces.

The idea of a universal state which was a lawful continuation of the Roman Empire and the correlative idea of a like universal church, image of the kingdom of God on earth, had dominated all the Middle Age and constituted, so to speak, the poles of its complicated political history. Those ideas had now lost a great part of their old moral force, and in their place emerged with power the idea of the lay state, limited in territory but absolutely sovereign within its confines and, therefore, not subject to any foreign tutelage. From this sprang the demand for a new juridical theory of sovereignty and a new foundation for the whole

of public right. The basis of all these political constructions was necessarily that conception of human nature which had been assumed by the supreme canon of the intellectual Renaissance and which in the specific field of right had already an established tradition and peculiar grounds of fitness. To place the ultimate foundation of right in the nature of man was singularly opportune for a revival of the Greek and Roman point of view and assumed a new meaning when the state was to be purified of the theocratic infiltrations of the Middle Age and to be restored to its character of an eminently human institution.

When this conception had been established in doctrine and confirmed by historical reality, a new principle followed: law was distinguished not only from theology, but from morals. Its central principle in this respect was the complete recognition of a sphere of liberty in the individual, not to be violated even by the state. In truth, if we admit that the state has only human ends and that its existence is founded not on a transcendent will and a supernatural end, but upon the demands of the nature of the individuals who compose it, it follows that its activity should be limited to what is required by their living together. Divergence of doctrines will begin when we seek to define precisely in what human nature consists; that is, to state what are the essential anthropological and psychological factors of society and of right. From the diversity of doctrines on this point, other discrepancies will arise as to the most appropriate form of government and the natural limits of its power.

But meanwhile a series of common principles remain fixed which constitute the characteristic traits of the school of natural right. Man is the substance of every right; the individual and the requirements of his nature are the originating and intrinsic reason of social decrees. The quality of a "person" as viewed by the law (*subjectum juris*) does not come to man because the state imparts to him his necessary organs and instruments by its statutes, but on the contrary, the state has for its presupposition the rights of

the individual. Positive law, which reveals itself through legal forms and what is externally given, is, therefore, subordinated to another law or right which has its foundation in human nature and is known directly by reason. The law or right of nature is known by the thinking of a tranquil mind. (*Jus naturæ cognoscitur ex ratiocinatione animi tranquilli*), as Thomasius says in remarkable words. So we see retranslated into terms of jurisprudence that rationalistic principle which was the herald of all modern thought. The psychological doctrine of the "I" as substance corresponds to the judicial doctrine of the individual as substance; the *a priori* in the order of knowledge is also *a priori* in the order of ethics and jurisprudence. As in general philosophy, the greatest problem will be hereafter the relation between the mind and the external world, between subject and object, so in legal philosophy the most urgent problem will be the relation between the individual and society, between the subjective assertion of right and its objective structures. To the place of the old efforts of dialectic to define the relation between spiritual and temporal power another series of inquiries and doctrines will succeed, having as their aim to define the relation between the rights of the individual and the authority of the state. The opposing terms which must henceforth be co-ordinated are no longer church and empire, but individual and political body, liberty and law.

Such is, as it were, the arch of the new philosophy of right which once more demonstrates the profound connection between the philosophic and the juridical conceptions of human nature. The idea that every man is by nature subject of right—only vaguely and by piecemeal affirmed in Greek philosophy and Roman jurisprudence, confirmed but in indirect and vanishing fashion by evangelical doctrine—is developed and becomes the basis of complete systems in the Renaissance and the modern age. It is at the same period that the conception of human personality is given a corresponding position in metaphysics and the theory of knowledge.

It is important, however, to show that political and legal systems of that period do not proclaim themselves in general as something new nor do they expressly repudiate what had gone before; rather they treasure all the elements of the earlier doctrine of natural right and follow its tradition in many places. The profound revolution which was worked out is less apparent in this field and, it may be said, less conscious than in theoretical philosophy and natural science. The reasons for this are sundry. Above all, preceding doctrines not only of classical antiquity but of the church contained a mine of arguments and propositions regarding right which, if not in strict conformity with the new orientation of political thought, were at least adaptable to it. There was then a natural tendency to accommodate to present exigencies and ends analogous doctrines and partial supports which tradition offered. There was a tendency to reclothe in old formulas even new ideas without much care as to whether, by such a proceeding, the true meaning of these new ideas would be rendered less clear or even in part be lost. In general, it may be noted that political doctrines are by nature more closely bound in their development to particular historical movements than are doctrines of pure philosophy; new principles are consequently developed more slowly and laboriously in the former than in the latter. A newly asserted right always meets greater opposition and obstacles in its course than does a new speculative truth; a new way of conceiving the political world installs itself with more difficulty *a priori* than a new way of understanding nature. The dominant conceptions of law are so intimately interwoven with historical reality that a reformation in them cannot be completed unless this same reality is modified or tends to modify itself, and this can happen only by degrees. The new doctrines must, therefore, arise at different times and appear in diverse attitudes according to particular exigencies and historical occasions before they can present themselves or be sustained in systematic form. They must often advance through events and without being announced at the outset in their

true character. They must maintain their stand in the field of action in order to bring about gradually a new meaning in formulas and conceptions which originally had a different sense. This was just what happened in the period which we are now considering. The school of natural right from the Renaissance to the French Revolution had substantial contents and a genuine spirit quite distinct from those of preceding schools, and corresponding to the subjective rationalism which reigned in the philosophy of that time. It clothed itself, however, largely in old formulas, and giving the guise of historical narrative to what was in reality a rational process, it wove the new demands for rights which the individual consciousness asserted upon the warp of traditional legends about the primitive state of humanity. Only by degrees and through a very significant process was the historical problem distinguished from the philosophical. It was recognized finally that the origin of society is one thing, the principle of its justification another. The true fundamental purpose of the new political speculation thus came to light, namely, the construction of the legal foundations of the state, the deduction of the authority of the social body from the principle of the rights of the individual.

We cannot take time to trace this process minutely. Enough for us to remark that already in the doctrine of Locke the rational element preponderates over the genetic, and we can see that what he really wishes to determine is the principle of right and not the facts as to the origin of human society. This intention is demonstrated still more clearly and perfectly in the system of Rousseau. The state of nature and the social contract are for Rousseau regulative principles, not historical facts; that is, they are ideas necessary for understanding the absolute and inalienable rights of the human person. The state of nature is, he says, a state "which no longer exists, which perhaps never has existed, which probably never will exist, and of which nevertheless it is necessary to have correct notions in order to judge of the present state." "We must not," he says

again, "understand the inquiries upon which we may enter in this subject as historical truths, but only as hypothetical and conditional reasoning, more proper to explain the nature of things than to show their true origin." The true object of the political speculation of Rousseau is the legitimate state, that is, the state which in its constitution conforms to the principle of equal individual liberty.

So the system of the rights of man and citizen was in preparation in the doctrine, which, already verified in part in the English constitution, was soon to have the most solemn political sanction in the American and French revolutions. By that system the human person is conceived as the first principle and absolute end of every political institution; his right is affirmed as the immanent and constituting reason of every government. The liberty of all men and their consequent equality before the law are declared the condition *a priori* of the validity of laws and of the legitimacy of public power. The individual, therefore, attains sovereignty in the order of right, as the individual reason had been assumed to be sovereign criterion of truth.

The philosophy of Kant represents the meeting and synthesis of these various motives, theoretical and practical, of rationalistic subjectivism. On the one hand, it marks the most complete systematic elevation of the critical principle of Descartes by which the human mind seeks its own laws within by introspection and finds in itself the foundation *a priori* of every experience. On the other hand, it recognizes in subjective consciousness an absolute moral dignity and declares man an end in himself. The essential rights of the person correspond in this way in Kant's political doctrine to the essential prerogatives of reason revealed by the criticism of knowledge. Both these capital elements associate themselves again in harmony in the system of Fichte, which is closely connected with that of Kant but goes beyond it. The "I" is declared by Fichte to be the thing in itself, to be the absolute principle in the realms of knowledge and being as well as in those of ethics and jurisprudence.

To this gradual triumph of reason in doctrines correspond the progress of institutions, the foundation of political liberties, and the still wider acknowledgment of human rights. The state which gives guarantees of right, which has for its presupposition the consciousness of the absolute value of the person, is established.

If now we were to trace the synthesis of the dominant doctrines in the last century and especially in the second half of it, we should find a new and ample confirmation of our thesis: that is, we should find preserved in various conditions that connection between the philosophical and the juridical conception of the human person which we have met heretofore. We shall, however, give this but a fleeting glance, both because of lack of space and because a few allusions will be sufficient to recall and distinguish what really belongs to our own time.

How a great empirical or positivist reaction followed the dominant rational idealism shortly after the beginning of the nineteenth century is known to all. The study of entities and ideas as such was abandoned; most investigators desired to limit all inquiry to phenomenal reality. The conception of a psychic substance was rejected and human consciousness was studied in its data only; that is, in its apparent activities in experience. Psychological personality was thus decomposed and the whole was considered as if it was made up of the accidents of its superficialities. It was expressly denied, for instance by Wundt, that a substantial unity or substrate immanent in the variety of conscious states can be admitted. This would be only a "collective conception"; it would denote, that is, the sum of the different psychic processes. Such an empirical society, cleverly defined by Lange as "psychology without a soul," has still great vogue to-day, although it has even recently been confuted by several illustrious philosophers. Vacherot states that when Michelet read the well known book of Taine on Intelligence, he exclaimed: "*Il me prend mon moi!*" (He takes away my self from me!) In this simple exclamation there is, it may be said, a victorious criticism

of that method which tends to deny in effect what should be the presupposition and fundamental object of the very science itself.

The empirical disintegration of personality which has operated in philosophy in general has had its exact counterpart in the philosophy of right. Although the political and legal institutions of our age are, in fact, as we have remarked, inspired with the idea of the essential rights of the person, which was the laborious fruit of a long anterior process; and although—notable fact—they tend also in their present development to realize it much more widely, the dominant theories in the philosophy of right to-day deny that idea, and deny the substantiality of the human being as a legal conception, even as in the other field psychological substantiality is denied. In jurisprudence too the process is one of externalizing; that is, being, or reality is reduced to external phenomena. It is declared that right is only a relative historical fact, a function of needs and changeable forces, not an objective and constant truth directly recognizable by reason. And this was the inevitable procedure; for if it be admitted that human nature does not exist as an entity but exists only in attitudes and concrete contingencies, we cannot subsequently admit a principle of law and jurisprudence which shall be universally adequate and in conformity with human nature as itself an entity.

No longer, therefore, do we have an order of rights belonging to the individual because he is an individual, an order which is involved in his very nature; we have only the series of positive historical rights, only the legal relations which are regulated by effective rules. The philosophy of right is to be in this way pushed indefinitely toward science, and is to be confounded with history or with the doctrine of positive law; or, if, mindful of its philosophical aspect, it seeks to rise to a synthetic conception of its object, it will run the risk, having already lost the notion of right as objective and independent entity, of being carried away bodily by the most general inductive science of human facts—sociology, so-called. That the tendencies so con-

stituted are actually at work in the philosophy of right to-day, those who are even slightly acquainted with actual conditions can easily vouch. It is hardly necessary to recall how many attack more or less openly its very existence as a science, wishing either to have its work greatly restricted, or else calling for a radical transformation which would be an abjuring of its past, or, finally, regarding it as in reality absorbed by other more positive disciplines. The same war was indeed waged against it which for analogous reasons was waged against philosophy in general. Merit, however, belongs rather to those who have dedicated the efforts of their genius to defend the glorious queen of juridical sciences from inconsiderate attacks; who have sustained her autonomy and demonstrated the perennial necessity of her office.

We, however, do not believe—and this too is the outcome, it seems to us, of our hasty survey—that the philosophy of right can really spring up again and recover in all its fullness the sovereign position that befits it until philosophy in general has emerged from the crisis in which it is now tormented. That this may occur before long is not only permissible to hope, but can be with good reason foretold. Modern thought, in abandoning itself to the mere examination of what is externally given, has forgotten too much the subjective presuppositions of such “data”; it has forgotten too much that nature is in substance a representation of “I.” Science has thus found itself in contradiction with consciousness. Above all, the moral principles which still live in the human soul and which, by their very essence, are such as to go beyond experience, have found themselves abandoned and betrayed by the exclusively empirical and superficial conception of the world. In vain has the human for a time attempted to go beyond itself by plunging headlong and sinking itself in what is only one of its own projections. It has been obliged to see at last that in this way it is still but following its own shadow and that the principle for the explanation of all is not outside but within itself. There, in the sanctuary of consciousness, in the intrinsic constitution of the subject, it must find for itself the first

law of being and of knowing; there too, the fountain of duty and of right.

Our age, still impregnated with empiricism and scepticism, has shown at last the need of leaving such an unquiet state of mind and of regenerating itself through criticism. Revision of fundamental conceptions, discussion of methods, examination of assumptions, are requirements that urge themselves upon all sciences. This fervor of criticism, although still ill-defined in its conclusions, is already in itself more than a symptom and preludes without doubt a renewed conception of the world through which earlier and existing conceptions may be overcome. The fruits of scientific inquiry will certainly not be lost by such a renewal; rather these and all that are still to be added to them will be made philosophically whole through greater knowledge. As the enlargement of the visual angle does not destroy or lessen the original unity of the point from which all the rays proceed, so the mind of the thinking subject remains necessarily the condition and law of every objective truth, however greatly the extension of this truth may be multiplied and increased. In the essence of the "I" will, therefore, be found the absolute principle on which a systematic comprehension of the universe may rest.

By analogy and through that intrinsic connection so often exhibited, it is in the human person that the absolute criterion of every value and the metaphysical *prius* of the truth of right must be found. In all the material which history presents throughout its course, the various legal facts must be grasped and interpreted through a conception which has its adequate seat in consciousness and is the condition *a priori* of the intelligibility of these facts. There must be admitted, moreover—and this is the criterion for the *contents* of the determinations in law and jurisprudence—an absolute need of justice which, though revealing itself only by degrees in experience, is yet ideally fixed in the very nature of man and interpenetrated therewith. This need or necessity of justice must be so conceived that when human nature is regarded in its full essence we can categori-

cally deduce from it the absolute and universal principles of human right, without awaiting their positive revelation in the historical field, but rather anticipating and preparing this field where it is still as yet wanting.

Certainly right proves its truth historically through struggle, and nothing is more complicated and laborious than the process by means of which an idea passes from the state of a mere speculative demand in legal theory to that of a positive social force. But its truth does not begin when such a historical process has been completed; on the contrary, the truth of the idea is anterior to the process and above it. The struggle for right is then struggle for a right which already is; the issue of the struggle may result in the recognition and concrete application of the right—never in making it become what it was not.

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